

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

JOHN STEVEN OLAUSEN,

Case No. 3:19-cv-00549-RFB-CLB

Plaintiff,

ORDER

v.

G. CARPENTER, et al.,

Defendants.

I. DISCUSSION

This action began with a pro se civil rights complaint filed pursuant to 42 U.S.C. § 1983 by a state prisoner. Plaintiff has submitted an application to proceed *in forma pauperis*. (ECF No. 8). Based on the financial information provided, the Court finds that Plaintiff is unable to prepay the full filing fee in this matter.

The Court entered a screening order on January 4, 2021. (ECF No. 9). The screening order imposed a 90-day stay and the Court entered a subsequent order in which the parties were assigned to mediation by a court-appointed mediator. (ECF Nos. 9, 12). The Office of the Attorney General has filed a status report indicating that settlement has not been reached and informing the Court of its intent to proceed with this action. (ECF No. 18). Accordingly, the Court lifts the stay and places this case back on the normal litigation track.

Plaintiff has filed a motion for appointment of counsel. (ECF No. 16). A litigant does not have a constitutional right to appointed counsel in 42 U.S.C. § 1983 civil rights claims. *Storseth v. Spellman*, 654 F.2d 1349, 1353 (9th Cir. 1981). Pursuant to 28 U.S.C. § 1915(e)(1), “[t]he court may request an attorney to represent any person unable to afford counsel.” However, the court will appoint counsel for indigent civil litigants only in “exceptional circumstances.” *Palmer v. Valdez*, 560 F.3d 965, 970 (9th Cir. 2009) (§ 1983 action). “When determining whether ‘exceptional circumstances’ exist, a court must consider ‘the likelihood of success on the merits as well as the ability of the petitioner to

1 articulate his claims *pro se* in light of the complexity of the legal issues involved.” *Id.*
 2 “Neither of these considerations is dispositive and instead must be viewed together.” *Id.*
 3 In the instant case, the Court does not find exceptional circumstances that warrant the
 4 appointment of counsel. The Court denies the motion for appointment of counsel without
 5 prejudice.

6 Plaintiff has also filed a motion requesting that the Court secure video of his recent
 7 medical appointment. (ECF No. 21). Plaintiff alleges that during his medical appointment,
 8 RN Melissa Mitchell, who had previously filed false charges against him, and warden
 9 Russell prejudiced Dr. Naughton against him by mentioning this lawsuit and Plaintiff’s
 10 complaint. (*Id.* at 2.) As Plaintiff was leaving several RN make comments “harassing and
 11 mocking Plaintiff for his mediation.” (*Id.*) Plaintiff argues that this violated the
 12 confidentiality of the mediation conference. (*Id.*)

13 None of these allegations demonstrate that anyone violated the confidentiality of
 14 the mediation conference. This lawsuit, as well as Plaintiff’s complaint and his various
 15 motions are matters of public record. The fact that warden Russell and several nurses
 16 are aware of this lawsuit, and that Plaintiff recently participated in a mediation conference,
 17 does not demonstrate that anyone violated the confidentiality of the mediation
 18 conference. As such, the Court denies Plaintiff’s motion without prejudice.

19 **II. CONCLUSION**

20 For the foregoing reasons, **IT IS ORDERED** that:

21 1. Plaintiff’s application to proceed *in forma pauperis* (ECF No. 8) is
 22 **GRANTED**. Plaintiff shall not be required to pay an initial installment of the filing fee. In
 23 the event that this action is dismissed, the full filing fee must still be paid pursuant to 28
 24 U.S.C. § 1915(b)(2).

25 2. The movant herein is permitted to maintain this action to conclusion without
 26 the necessity of prepayment of any additional fees or costs or the giving of security
 27 therefor. This order granting leave to proceed *in forma pauperis* shall not extend to the
 28 issuance and/or service of subpoenas at government expense.

1 3. Pursuant to 28 U.S.C. § 1915, as amended by the Prison Litigation Reform
2 Act, the Nevada Department of Corrections will forward payments from the account of
3 **John Steven Olausen, #14804** to the Clerk of the United States District Court, District of
4 Nevada, 20% of the preceding month's deposits (in months that the account exceeds
5 \$10.00) until the full \$350 filing fee has been paid for this action. The Clerk of the Court
6 will send a copy of this order to the Finance Division of the Clerk's Office. The Clerk will
7 send a copy of this order to the attention of **Chief of Inmate Services for the Nevada**
8 **Department of Corrections**, P.O. Box 7011, Carson City, NV 89702.

9 4. The Clerk of the Court shall electronically **SERVE** a copy of this order and
10 a copy of Plaintiff's complaint (ECF No. 10) on the Office of the Attorney General of the
11 State of Nevada by adding the Attorney General of the State of Nevada to the docket
12 sheet. This does not indicate acceptance of service.

13 5. Service must be perfected within ninety (90) days from the date of this order
14 pursuant to Fed. R. Civ. P. 4(m).

15 6. Subject to the findings of the screening order (ECF No. 9), within twenty-
16 one (21) days of the date of entry of this order, the Attorney General's Office shall file a
17 notice advising the Court and Plaintiff of: (a) the names of the defendants for whom it
18 accepts service; (b) the names of the defendants for whom it does not accept service,
19 and (c) the names of the defendants for whom it is filing the last-known-address
20 information under seal. As to any of the named defendants for whom the Attorney
21 General's Office cannot accept service, the Office shall file, under seal, but shall not serve
22 the inmate Plaintiff the last known address(es) of those defendant(s) for whom it has such
23 information. If the last known address of the defendant(s) is a post office box, the Attorney
24 General's Office shall attempt to obtain and provide the last known physical address(es).

25 7. If service cannot be accepted for any of the named defendant(s), Plaintiff
26 shall file a motion identifying the unserved defendant(s), requesting issuance of a
27 summons, and specifying a full name and address for the defendant(s). For the
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1 defendant(s) as to which the Attorney General has not provided last-known-address
2 information, Plaintiff shall provide the full name and address for the defendant(s).

3 8. If the Attorney General accepts service of process for any named
4 defendant(s), such defendant(s) shall file and serve an answer or other response to the
5 complaint (ECF No. 10) within sixty (60) days from the date of this order.

6 9. Plaintiff shall serve upon defendant(s) or, if an appearance has been
7 entered by counsel, upon their attorney(s), a copy of every pleading, motion or other
8 document submitted for consideration by the Court. If Plaintiff electronically files a
9 document with the Court's electronic-filing system, no certificate of service is required.
10 Fed. R. Civ. P. 5(d)(1)(B); Nev. Loc. R. IC 4-1(b); Nev. Loc. R. 5-1. However, if Plaintiff
11 mails the document to the Court, Plaintiff shall include with the original document
12 submitted for filing a certificate stating the date that a true and correct copy of the
13 document was mailed to the defendants or counsel for the defendants. If counsel has
14 entered a notice of appearance, Plaintiff shall direct service to the individual attorney
15 named in the notice of appearance, at the physical or electronic address stated therein.
16 The Court may disregard any document received by a district judge or magistrate judge
17 which has not been filed with the Clerk, and any document received by a district judge,
18 magistrate judge, or the Clerk which fails to include a certificate showing proper service
19 when required.

20 10. This case is no longer stayed.

21 11. Plaintiff's motion for appointment of counsel (ECF No. 16) and his motion
22 to secure video footage (ECF No. 21) are denied without prejudice.

23 DATED THIS 21 day of April 2021.

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26 UNITED STATES MAGISTRATE JUDGE
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